

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>KENT WIYNINGER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 222,541
<b>U.S.D. 259</b>	)	
Respondent	)	
Self-Insured	)	

**ORDER**

Respondent appealed the September 13, 2002, Post Award Order entered by Administrative Law Judge Jon L. Frobish. The Appeals Board (Board) placed this case on its summary docket for a decision without oral argument.

**Appearances**

James R. Shetlar of Overland Park, Kansas, appeared for claimant. Robert G. Martin of Wichita, Kansas, appeared for respondent.

**Record and Stipulations**

The record considered by the Board is listed in the June 3, 2002, Award and the June 7, 2002 Award Nunc Pro Tunc, together with the transcript of the September 12, 2002, Post Award Hearing, the exhibits introduced at the hearing and the pleadings in that administrative file. The record contains no additional stipulations post award, but respondent's counsel did agree at the September 12, 2002, hearing to pay certain medical expenses. That agreement was incorporated into Judge Frobish's September 13, 2002, Post Award Order.

### Issues

This matter came before Judge Frobish on claimant's July 13, 2002, Application for Post Award Medical requesting "Treatment for carpal tunnel; payment of outstanding medical bills; attorney fees." <sup>1</sup>

Included in Judge Frobish's September 13, 2002, Post Award Order, was an order authorizing ". . . treatment for the Claimant's upper extremities." Respondent appealed stating "the specific issue respondent and self-insured wish to address is:

1. Whether claimant's alleged carpal tunnel injury arose out of and in the course of his employment with respondent." <sup>2</sup>

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant was awarded permanent partial disability compensation based upon a 41.19 percent work disability resulting from injuries claimant suffered on April 22, 1996 to his right knee and back. The June 3, 2002 Award and the June 7, 2002 Award Nunc Pro Tunc also contain a "Conclusion of Law" that "The Claimant's request for payment of the medical bill of Dr. Kluff [sic] in the amount of \$31.00 is denied. This was for an office visit for problems to his hands which are not part of this claim." Neither the Award nor the Award Nunc Pro Tunc were appealed and are, therefore, final orders.

There was no testimony taken at the September 12, 2002 hearing, although claimant's counsel proffered that if claimant were to testify he would state that ". . . he's losing feeling in both of his fingers [sic] and some of the fingers in his hands." <sup>3</sup> The only medical evidence presented consisted of records and reports that were generated before the entry of the Award.

Claimant contends that his upper extremities condition, specifically carpal tunnel syndrome, is a direct result of his use of crutches following the work related injuries and the knee and back surgeries he has undergone as a result of those injuries. Respondent refers to claimant's regular hearing testimony and points out that there are other possible explanations for claimant's alleged upper extremity problems, including the keyboarding claimant performs in connection with his college course work.

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<sup>1</sup> This form K-WC E-4 Application for Post Award Medical is signed and dated July 13, 2002, but is stamped received by the Kansas Division of Workers' Compensation on July 12, 2002. As the document was transmitted by facsimile and is imprinted with a transmission date of July 13, 2002, it appears that the date file stamped by the Division was in error.

<sup>2</sup> Application for Review of Post-Award Order of September 13, 2002 (filed Sept. 23, 2002).

<sup>3</sup> P.A.H. Trans. at 5-6.

The procedure for obtaining post award medical benefits is addressed in K.S.A. 44-510k. That statute contemplates “. . . further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award.” In this case, the Award specifically excludes the upper extremities. Accordingly, where claimant is seeking medical benefits for treatment of a condition not part of the original award, but for a new condition, he must first establish that the new condition is a direct and probable consequence of the original work-related injuries. The record presented at the post-award hearing is deficient in this regard. There is no expert medical testimony post dating the entry of the Award and, consequently, no physician’s opinion that claimant’s present upper extremities condition and need for treatment is a direct and natural consequence of the work-related injuries established in the Award.

Therefore, irrespective of whether the post award hearing is conducted pursuant to K.S.A. 44-510k or under K.S.A. 44-528, claimant’s burden is to prove a direct causal connection between the work-related injury as established in the Award and the condition for which the medical treatment is being sought. Because claimant has failed to meet his burden of proving that the treatment he is seeking is a natural consequence of the work-related injury, the request for treatment for the upper extremities must be denied.

**Award**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Post Award Order entered by Administrative Law Judge Jon L. Frobish on September 13, 2002, should be, and the same is hereby modified in accordance with the above findings and conclusions to deny additional authorized medical treatment for claimant’s bi-lateral upper extremity conditions.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ January 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James R. Shetlar, Attorney for Claimant  
Robert G. Martin, Attorney for Respondent  
Robert L. Frobish, Administrative Law Judge  
Director, Division of Workers Compensation